George Bowes, *Esquire*, - - - - - - - - - - Appellant.

The Right Honourable George *Earl of* Shrewsbury, Barbara *Lady Dowager* Aston, Charles Talbot, Charles Dormer, James Talbot, Thomas Talbot, *and* Francis Talbot, *Esquires*, Lucy Talbot, *Dame* Teresa Mostyn, Thomas Salwin, *Esq*; *and* Mary *his Wife*, John Maire *Esq*; *and Sir* Thomas Webb, *Baronet*, - - - } Respondents.

The CASE *of Mr.* Maire, *One of the* Respondents.

BY certain Articles between *Ann* Lady *Belasyse*, by the Style and Title of Lady *Ann Belasyse*, Relict, and One of the Executrixes, of *John* Lord *Belasyse*, deceased, of the one Part; and *John Talbot*, of *Longford*, in the County of *Salop*, Esquire, of the other Part; after reciting, or taking notice, to the following Effect; *viz.*—That a Marriage was agreed upon between the said *John Talbot* and the Honourable *Katherine Belasyse*, One of the Daughters of the said Lord and Lady *Belasyse*; and that, in Consideration of such Marriage, and the Sum of 14,000*l.* secured to be paid, as therein after-mentioned, unto him the said *John Talbot*, for the Marriage Portion of her the said *Katherine*, several of his Estates, consisting of divers Manors, Lands, Tenements, and Hereditaments, in the Counties of *Salop*, *Gloucester*, *Hereford*, *Leicester*, and *Warwick*, were by him, and others, in and by Indenture Tripartite, bearing equal Date with such Articles, settled and assured to himself for Life; and then, as to Part, to the said *Katherine*, for her Life, in Jointure, with Remainders over: And taking notice, that *Hugh* Lord Viscount *Cholmondeley* stood indebted to the Estate of the said *John* Lord *Belasyse* in the Sum of 6,000*l.*; *Thomas Brome Whorwood*, Esquire, in the Sum of 5,100*l.*; and *Thomas White*, Esquire, in the Sum of 3,000*l.*; upon several Mortgages—She the said *Ann* Lady *Belasyse*, in Consideration of the said Marriage, covenanted, declared, and agreed, to and with the said *John Talbot*, his Executors and Administrators, That such Mortgages for the said several Sums, amounting to the Sum of 14,100*l.* should from thenceforth be holden by the several Persons interested or estated therein, upon the following Trusts; *viz.*

As to the Sum of 100*l.* Parcel of the said Sum of 5,100*l.* and as to the Interest then due on all the said Principal Sums, Upon Trust, for her the said *Ann* Lady *Belasyse*, and the other Executors of the said *John* Lord *Belasyse*:

And as to the Principal Sum of 14,000*l.* Residue of such 14,100*l.* and the Interest from thenceforth to grow due for the same 14,000*l.* in Trust, for the said *John Talbot*, his Executors and Administrators, for and in Satisfaction of the said Marriage Portion.

Then come the following Clauses in the said Articles, upon which the present Case arises between the Appellant and Respondents; and therefore such Clauses are set forth *in hæc verba*; viz.

" To this Intent and Purpose, nevertheless, and under this express Agreement made between the said " *John Talbot* and the said Lady *Ann Belasyse*, that 2,000*l.* only of the said 14,000*l.* with the Interest " henceforth to grow due for the said 2,000*l.* shall be taken and applied for the sole Use and Disposé of him " the said *John Talbot*, his Executors, Administrators, and Assigns; and that the 12,000*l.* Residue of the " said 14,000*l.* shall, with what convenient Speed may be, be called in: And the said *John Talbot* doth " for himself, his Heirs, Executors, and Administrators, hereby expressly covenant, promise, and agree, " to and with the said Lady *Ann Belasyse*, her Executors and Administrators, that he the said *John Talbot*, " his Executors or Administrators, shall and will, with what convenient Speed may be after the said Marriage " shall be solemnized, call in the said 12,000*l.* Residue of the said 14,000*l.* Principal Money, and dispose the same wholly in and for the Purchase of Lands which shall be situate within the Counties of " *Salop*, *Gloucester*, *Hereford*, *Leicester*, *Warwick*, *Chester*, *Stafford*, or *Worcester*, some or One of them " (the Title whereof shall be approved by the said Lady *Ann Belasyse*, her Executors or Administrators, " or her or their Counsel learned in the Law); and, after such Purchase made, shall and will settle the " Lands, so to be purchased, to the Uses herein after-mentioned; that is to say, To the Use of the said " *John Talbot*, for and during the Term of his natural Life, without Impeachment of or for any manner " of Waste; and, after his Decease, to the Use of the said *Katherine*, for the Term of her natural Life, in " Augmentation of her Jointure; and, after the Determination of the said several Estates limited to the said " *John Talbot* and *Katherine*, to the Use of the said Lady *Ann Belasyse* and *Thomas* Earl *Falconberge*, and " their Heirs, during the natural Lives of the said *John Talbot* and *Katherine*, and the Life of the longer " Liver of them, upon Trust, to support and preserve the contingent Uses and Estates thereof herein after " limited from being destroyed or discontinued; and, for that Purpose, to make Entries as Occasion shall " require; but nevertheless to permit and suffer the said *John Talbot*, during his Life, and, after his Decease, the said *Katherine*, and her Assigns, during the Term of her Life, to have, receive, and take, the " Rents and Profits of the same Premises, to his, her, and their, own Use and Uses; and, after the several Deceases of the said *John Talbot* and *Katherine*, to the Use of the First Son, and of all and every " other Son and Sons of the said *John Talbot*, on the Body of the said *Katherine* to be begotten, severally " and successively, one after another, according to their Seniorities of Age, and Priority of Birth, and " the Heirs Male of their several Bodies issuing; the elder of such Sons, and the Heirs Male of his Body " issuing, being always preferred to take before the younger of such Sons, and the Heirs Male of his or " their Bodies issuing: and, for Default of such Issue, to the Use of the said Lady *Ann Belasyse* and *Thomas* " Earl *Falconberge*, their Executors, Administrators, and Assigns, for the Term of 500 Years, without " Impeachment of Waste, upon the Trusts, and as a supplemental Security, for the better and more speedy " raising of the Portions and Maintenances intended for the Daughter or Daughters of the said *John Talbot*, " to be begotten on the Body of the said *Katherine*, in case there shall be a Failure of Issue Male between " them, as in the said Indenture Tripartite is mentioned; and under the like Provisoes and Agreements, " touching the Raising and Payment of the said Portions and Maintenances, as in the said Tripartite Indenture is mentioned; and, after the Determination of the said 500 Years Term, to the Use of the said " *John Talbot*, his Heirs and Assigns for ever."

After

After what is ſo afore ſtated *in hæc verba*, come in ſome other Clauſes immaterial to the preſent Queſtion; and then the following one; *viz.*

Clauſe for the Intereſt of the 12,000 to go as the Profits of the Lands, when purchaſed.

"Provided always, and it is declared and agreed, by and between the ſaid Parties to theſe Preſents, That "the Intereſt henceforth to grow due for the ſaid 12,000*l.* Principal Money, agreed to be laid out and diſ- "poſed for the Purchaſe of Lands, as aforeſaid, until the ſame ſhall be diſpoſed, ſhall be had and taken by "the ſaid *John Talbot* and *Katherine*, and the Survivor of them; and, after their Deceaſes (in caſe they ſhall "both happen to die before ſuch Purchaſe made) by thoſe to whoſe Uſe in Remainder the Lands ſo to be "purchaſed are to be ſettled, as aforeſaid, according to the true Intent of theſe Preſents; and as the Profits of "the ſaid Lands, ſo to be purchaſed and ſettled, are to be enjoyed, in caſe ſuch Lands ſhall be purchaſed "and ſettled as aforeſaid."

Mr. Talbot's Receipt for the Portion.

The Marriage between the ſaid *John Talbot* and *Katherine Belaſyſe* was, ſhortly after entering into the ſaid Articles, had and ſolemnized; and he the ſaid *John Talbot*, by Writing under his Hand, dated 13th *April* 1692, acknowleged that the ſaid 14,000*l.* had been paid or ſecured to him to his Content; but, before a proper Purchaſe of Lands was found, wherein to inveſt the ſaid 12,000*l.* an Act of Parliament paſſed in the 11th and 12th Years of King *William* the Third, *Anno* 1700, whereby it was enacted as follows; *viz.*

Clauſe in the 11th and 12th Wm. III. reſtraining R——n Catholicks purchaſing, &c.

"That, from and after the 10th Day of *April* which ſhall be in the Year of our Lord 1700, every Pa- "piſt, or Perſon making Profeſſion of the Popiſh Religion, ſhall be diſabled, and is hereby made incapa- "ble, to purchaſe, either in his or her own Name, or in the Name of any other Perſon or Perſons, to his "or her Uſe, or in Truſt for him or her, any Manors, Lands, Profits out of Lands, Tenements, Rents, "Terms, or Hereditaments, within the Kingdom of *England*, Dominion of *Wales*, and Town of *Berwick* "*upon Tweed*; and that all and ſingular Eſtates, Terms, and any other Intereſts or Profits whatſoever, out "of Lands, from and after the ſaid 10th Day of *April*, to be made, ſuffered, or done, to or for the Uſe or "Behoof of any ſuch Perſon or Perſons, or upon any Truſt or Confidence mediately or immediately, to "or for the Benefit or Relief of any ſuch Perſon or Perſons, ſhall be utterly void, and of none Effect, to "all Intents, Conſtructions, and Purpoſes whatſoever."

Mr. and Mrs. Talbot's being R——n Catholicks, a Fact allowed between the Parties.

It is well known, and is a Fact agreed upon, as well by the Appellant as by the ſeveral Reſpondents, to be allowed and taken for granted on both Sides in the preſent Controverſy between them, that the ſaid *John Talbot* and *Katherine* his Wife, at the time the Articles bears Date, were *R—n* Catholics, or Perſons profeſſing the *R—n* Catholic or Popiſh Religion, and ſo continued till the Times of their reſpective Deceaſe.

They had Children, who died young. She died 11 Feb. 1737; and he died 23 June, 1743, inteſtate and without Iſſue.

The ſaid *John Talbot* and *Katherine* his Wife had Iſſue between them ſeveral Children, who all died very young, in the Life-time of their Father and Mother; and the ſaid *Katherine* died the 11th Day of *February* 1737; and the ſaid *John Talbot* ſurvived her, and all ſuch Children, upwards of Five Years and an half, and died without Iſſue, and inteſtate, upon the 23d Day of *June* 1743, poſſeſſed of a perſonal Eſtate to the Amount of 12,000*l.* and upwards, but not of any of the Mortgages mentioned in the Marriage Articles.

Gilbert late Earl of Shrewsbury, only Couſin-german and next of Kin, adminiſtered.

Gilbert late Earl of *Shrewſbury*, after the Deceaſe of the ſaid *John Talbot*, obtained Adminiſtration of his perſonal Eſtate, as his only Couſin-german and next of Kin; and, as ſuch, by the Statute of Diſtributions, was ſolely intitled to the Whole of ſuch perſonal Eſtate, ſubject only to his Debts and Funeral Expences.

Earl Gilbert's Will, and the Reſpondent Maire Executor.

The ſaid Earl *Gilbert*, who was Uncle of the preſent Earl of *Shrewſbury*, ſoon after obtaining ſuch Adminiſtration, as aforeſaid, duly made his Will, and thereby directed the Surplus of his perſonal Eſtate to be divided into Moieties; and gave one Moiety to his Nephew, the preſent Earl, and his other Nephews and Nieces, and the other Moiety to the Reſpondent *Maire*; and made him ſole Executor.

Earl Gilbert's Death, Reſpondent Maire proved his Will, and adminiſtered to Mr. Talbot. The Reſpondent the preſent Earl nearly related to Mr. Talbot; but only of the Half-blood, ſo not his Heir. Anceſtor of the Appellant married into the Talbot Family about 200 years ago. Trinity Term, 1753. Appellant brought his Bill as Heir for the 12,000 l. on the common Footing, that Money articled to be realized ſhould be conſidered as Land.

The ſaid Earl *Gilbert*, ſome ſhort time after the making his ſaid Will, alſo died; and the Reſpondent *Maire* duly proved the ſame, and alſo obtained Adminiſtration *de bonis non* of the ſaid *John Talbot*.

The preſent Earl of *Shrewſbury*, and his Family, though nearly related to the ſaid *John Talbot*, being only of the Half-blood, his Lordſhip was not therefore his Heir at Law; and, for a conſiderable time after Mr. *Talbot*'s Death, it remained uncertain who was ſuch Heir; but it being diſcovered, that an Anceſtor of the Appellant Mr. *Bowes*, about Two hundred Years ago, intermarried with a Daughter of the *Talbot* Family, and there not appearing any Claimant who ſeemed to ſtand nearer in Point of Heirſhip, the Appellant, in *Trinity* Term 1753, brought his Bill in the Court of Chancery; inſiſting, that he was intitled to the Benefit of the ſaid Articles, and to have a ſpecific Performance thereof; and praying, That the Reſpondent *Maire* might lay out the ſaid 12,000*l.* in the Purchaſe of Lands, and convey the ſame to him the Appellant, and his Heirs, and pay him Intereſt for the ſaid 12,000*l.* until ſuch Purchaſe; or otherwiſe pay him the Appellant the ſaid 12,000*l.* out of the ſaid Mr. *Talbot*'s perſonal Eſtate, with Intereſt from his Deceaſe.

Reſpondent's Anſwers.

To which Bill the ſeveral Reſpondents put in their Anſwers; admitting that the ſaid 12,000*l.* had not been laid out in the Purchaſe of Land; and the Reſpondent *Maire* admitted Aſſets, and ſaid, that though he had heard of no Perſon who appeared to him nearer than the Appellant in Point of Heirſhip to the ſaid *John Talbot*, yet did not know that the Appellant was his Heir at Law; and put the Appellant upon the Proof thereof: And all the Reſpondents ſubmitted to the Judgment of the Court, upon the ſeveral Matters and Things afore-ſtated, in caſe the Appellant was ſuch Heir, Whether he was intitled to have the ſaid 12,000*l.* taken from the perſonal Eſtate, and conſidered as Land?

Admiſſion of Aſſets; But the Appellant put upon Proof of his Heirſhip.

Appellant's Examination of Witneſſes for proving his Heirſhip.

His Agreement admitting Mr. and Mrs. Talbot to have been R——n Catholicks.

The Appellant examined ſeveral Witneſſes, for the deducing down, and to authenticate, his Pedigree, and in Proof of his Heirſhip; but no Witneſſes were examined on the Part of the Reſpondents, by reaſon that the Appellant had entered into a written Agreement with them, for admitting that Mr. *Talbot*, at the time of the making and executing the Articles, was a *Roman* Catholick, or Papiſt, and continued to profeſs the *R—n* Catholic or Popiſh Religion to the time of his Deceaſe.

23 Feb. 1757. Hearing before the Lords Commiſſioners, who were clear in their Opinion for diſmiſſing the Bill.

The Cauſe came on to be heard before the Right Honourable Sir *Sidney Stafford Smythe* Knight, and Sir *John Eardley Wilmot* Knight, Two of the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain*, upon the 22d and 23d Days of *February* laſt; when their Lordſhips, after long Debate of the Matter, were clearly of Opinion, that the ſaid 12,000 ought to be conſidered as Money, and not as Land; and that the Heir at Law of the ſaid *John Talbot* was not intitled to have the ſaid 12,000*l.* paid to him, or to have the ſame laid out in a Purchaſe of Land; and therefore diſmiſſed the Appellant's Bill.

Plaintiff's Appeal.

From which Order of Diſmiſſion the Plaintiff Mr. *Bowes* has appealed to your Lordſhips; but it is humbly hoped, it will appear that the Appellant's Bill was juſtly diſmiſſed, for the following, among other,

REASONS:

REASONS:

I. Mr. *Talbot* was not limited by the Articles to any preciſe Time for laying out the Money in the the Purchaſe of Lands; and the Statute of the 11th and 12th of *William* III. having paſſed before the Money was ſo actually laid out, Mr. *Talbot* could not afterwards inveſt the ſame in Land to the Uſes agreed upon and ſpecified in the Articles.

II. Mr. *Bowes* can only claim by Deſcent from Mr. *Talbot*, as his Heir at Law; and Mr. *Talbot*, the Anceſtor, being, by the ſaid Act, diſabled from purchaſing Lands, or taking any Intereſt therein, therefore his Heir, Mr. *Bowes*, can inherit nothing in Right of ſuch Heirſhip, nor take any thing by Deſcent from ſuch Anceſtor, as it is an undoubted and invariable Rule in Law, that, before the Heir can in any-wiſe be allowed or admitted to ſucceed, or be intitled by Deſcent, he muſt firſt ſhew that his Anceſtor was actually ſeiſed, and died ſo ſeiſed.

III. It is not neceſſary to ſhew any expreſs Declaration by Mr. *Talbot*, that the 12,000 *l.* ſhould be conſidered as Money, and not as Land: For, after paſſing the ſaid Act, it became impracticable for him to convert it into Land; and the Operation of the Act of Parliament, in diſabling him to purchaſe Land, and in altering the Nature of the Eſtate, was equally or more ſtrong and effectual than any Declaration Mr. *Talbot* could have made; and he muſt have thought it unneceſſary to declare that it ſhould be Money, when the Legiſlature had already, in effect, enacted that it ſhould ſo remain and be conſidered, and ſhould not be inveſted in, or conſidered as, Land.

IV. But if it was neceſſary to ſhew ſuch Conſent or Intention of Mr. *Talbot*, in the Eye of the Law, his Conſent, as well as that of all other Subjects, is ſuppoſed and conſidered as given to every Act of Parliament; and therefore Mr. *Talbot*, by the paſſing the ſaid Act, conſented, in the moſt binding Manner, that the 12,000 *l.* ſhould not be laid out in Land, but remain in Money.

V. Mr. *Talbot*, from the time the Mortgages, in the Articles mentioned, were paid off, till his Death, never kept this 12,000 *l.* as a ſeparate Fund, but ſuffered it to be mixed and blended with his other perſonal Eſtate; which is a further Proof of his Intention, that the ſame ſhould be deemed Money, ſucceeded to as ſuch, and go to his perſonal Repreſentative.

For which and divers other Reaſons, the Reſpondent Maire *humbly hopes, that the ſaid Order of Diſmiſſion ſhall be Affirmed, and the Appeal Diſmiſſed.*

C. PRATT.
R. CLAYTON.

Die Veneris 10°. February 1758.

Ordered & Adjudged, That the ſaid Appeal be & is hereby diſmiſſed this Houſe, and that the ſaid Order of Diſmiſſion therein complained of be and the ſame is hereby affirmed.

The Respondent Major's CASE.

To be Heard at the Bar of the HOUSE OF LORDS,
on the Day of
1758.